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11 EDWIN LIONEL R. MORA, ALLAN VILLANUEVA, H2O NOW USA

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IGLESIA NI CRISTO (Church of Christ),

v. Plaintiff,

LUISITO E. CAYABYAB, ISAIAS T.
SAMSON, JR., ROLANDO DIZON, JR.,
LIONEL ROQUE DELA USO, ALLAN
MONTE DE RAMOS, JERIEL NEMIS,
JESLE LLABAN KUIZON, BERNARD
GARCIA, LIEZL DIAZ-DEOCAMPO,
EDWIN LIONEL R. MORA, ALLAN
VILLANUEVA, H2O NOW USA, a
California Non-Profit Mutual Benefit
Corporation,

Defendants.

Case No.: 5:18-CV-00561-BLF

**REPLY MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT**

Date: Thursday, February 27, 2020
Time: 9:00 a.m.
Judge: Hon. Beth Labson Freeman
Ctrm.: 3, 5th Floor

1 **I. INTRODUCTION**

2 Defendants Luisito E. Cayabyab (“Cayabyab”), Rolando Dizon, Jr. (“Dizon”), Lionel Roque De
 3 La Uso (“De La Uso”), Allan Monte De Ramos (“Ramos”), Jesle Llaban Kuizon (“Kuizon”), Edwin
 4 Lionel R. Mora (“Mora”), Allan Villanueva (“Villanueva”) and H2O Now USA (collectively,
 5 “Defendants”) are entitled to summary adjudication on each cause of action in Plaintiff Iglesia Ni Cristo
 6 (Church of Christ)’s (“Plaintiff” or “INC”) Second Amended Complaint for False Designation of Origin,
 7 Copyright Infringement, Federal Trademark Infringement, Infringement of Unregistered Logo and
 8 Trademark, Unfair Competition Under Cal. Bus. & Prof. Code., Unfair Competition Under California
 9 Common Law (“Second Amended Complaint”), pursuant to Federal Rule of Civil Procedure 56, on the
 10 ground that none of the Defendants infringed any of Plaintiff’s trademarks or copyrights. Plaintiff’s
 11 Opposition does not submit any admissible evidence of any use of any of Plaintiff’s trademarks or
 12 copyrights by any of the Defendants, and does not raise any genuine issues of material fact.

13 **II. EVIDENTIARY OBJECTIONS**

14 **A. The Declaration of Nicole M. Goss Does Not Properly Authenticate Any of the**
 15 **Attached Documents Allegedly Evidencing Defendants’ Use of INC’s Copyrights**
 16 **and Trademarks**

17 The Declaration of Nicole M. Goss in support of INC’s Opposition to the Motion for
 18 Summary Judgment attaches approximately 30 pages of documents purportedly evidencing
 19 “Defendants’ use of its trademarks” and approximately 50 pages of documents purportedly
 20 evidencing “Defendants’ use of its copyrights.” Doc. 126¹, pp. 20, ¶¶ 9, 10, Doc. 126-3 and Doc.
 21 126-4, Exhs. G and H. Neither the Opposition nor the Declaration of Nicole M. Goss make any
 22 attempt to authenticate this so-called “mountain of evidence” under Federal Rule of Evidence 901,
 23 nor are the documents “self-authenticating” under Federal Rule of Evidence 902. *See Prime Media*
 24 *Group, LLC v. Acer America Corp.*, 2015 U.S. Dist. LEXIS 7515, at *3 (N.D. Cal. Jan. 22, 2015)
 25 (“With the exception of self-authenticating evidence enumerated in Federal Rule of Evidence 902,
 26 before an item may be admitted into evidence, the proponent must produce evidence sufficient to

27 ¹ All citations herein to “Doc.” refers to ECF Documents and ECF Page Numbers.
 28

1 support a finding that the item is what the proponent claims it is. FRE 901.”). Therefore, the
 2 unauthenticated documents cannot be considered for purposes of summary judgment. *See Hal Roach
 3 Studios, Inc. v. Richard Feiner and Co., Inc.*, 896 F.2d 1542, 1550 (9th Cir. 1990) (“It is well
 4 established that unauthenticated documents cannot be considered on a motion for summary
 5 judgment.”) (*citing Canada v. Blain’s Helicopters, Inc.*, 831 F.2d 920, 925 (9th Cir. 1987); *see also*
 6 *Orr v. Bank of America*, 285 F.3d 764, 773 (9th Cir. 2002) (“A trial court can only consider
 7 admissible evidence in ruling on a motion for summary judgment. Authentication is a ‘condition
 8 precedent to admissibility.’ … We have repeatedly held that unauthenticated documents cannot be
 9 considered in a motion for summary judgment”) (citation omitted).

10 **B. The Declarations of Lorna Diaz, Theodore B. Raza, Amor Tuzon Sagabaen,**
 11 **Araceli Lugtu, Ofelia Olegario, Susan Soriano, Erano P. Mallare, Luzviminda**
 12 **Tugas Obiacoro, John P. Borg, Eddie M. San Gabriel, and Rizalino C. Santos**
 13 **Are Not Verified in Conformance with 28 U.S.C. § 1746 and Must Be**
 14 **Disregarded**

15 The Declaration of Nicole M. Goss attaches as Exhibit D “eleven signed declarations attesting
 16 to Defendants’ use of Plaintiff’s trademarks, Defendants’ use of Plaintiff’s copyrighted hymns, and to
 17 the consumer confusion caused by Defendants’ use of Plaintiff’s trademarks.” Doc. 126, pp. 19-20, ¶
 18 6; Doc. 126-1, Exh. D, pp. 48-74. The attached Declarations of Lorna Diaz (Doc. 126-1, p. 54),
 19 Theodore B. Raza (Doc. 126-1, p. 55), and Amor Tuzon Sagabaen (Doc. 126-1, pp. 69-71) are not
 20 sworn under penalty of perjury as required by 28 U.S.C. § 1746, and are not admissible as evidence.
 21 *See Barroca v. Santa Rita Jail*, 2006 U.S. Dist. LEXIS 8297, at *10-*11 (N.D. Cal. Mar. 3, 2006)
 22 (stating “[a] declaration is not admissible as evidence if not verified as true and correct and signed
 23 under penalty of perjury” and finding that unverified “declaration is insufficient to defeat summary
 24 judgment.”). The Declarations of Araceli Lugtu (Doc. 126-1, pp. 50-51), Ofelia Olegario Doc. 126-
 25 1, pp. 52-53), Susan Soriano (Doc. 126-1, pp. 56-57), Erano P. Mallare (Doc. 126-1, pp. 58-60),
 26 Luzviminda Tugas Obiacoro (Doc. 126-1, pp. 61-62), John P. Borg (Doc. 126-1, pp. 63-64), Eddie
 27 M. San Gabriel (Doc. 126-1, pp. 65-66), and Rizalino C. Santos (Doc. 126-1, pp. 67-68) are made on
 28 “information”, and are likewise inadmissible for purposes of summary judgment. *See Columbia*

1 *Pictures Industries, Inc. v. Professional Real Estate Investors, Inc.*, 944 F.2d 1525, 1529 (9th Cir.
 2 1991), *aff'd*, 508 U.S. 49 (1993) ("Because [the] declaration is not based on personal knowledge, but
 3 on information and belief, [the declarant's] statement does not raise a triable issue of fact ...") (*citing*
 4 *Taylor v. List*, 880 F.2d 1040, 1045 n.3 (9th Cir. 1989)); *see also United States v. James*, 61 F.3d 913
 5 (9th Cir. 1995) (concluding that a declaration of counsel "who testified on information and belief"
 6 "was of no evidentiary value"). Therefore, the Court should adopt its prior ruling that Defendants'
 7 "evidentiary objections ... are largely well taken in terms of the declarations not being under oath"
 8 (Doc. 48, p. 8:20-22) and find that the foregoing Declarations are not admissible evidence.

9 **C. The Court Should Decline to Take Judicial Notice of INC's "Our History"**
 10 Webpage

11 The Court should decline INC's Request for Judicial Notice of its "Our History" Webpage.
 12 Doc. 127.² Contrary to the Request for Judicial Notice, the propaganda statements on the Webpage
 13 about how "the Church continues to progress and succeed" (Doc. 127, p. 9) do not serve to
 14 "demonstrate[] the fame and strength of Plaintiff's marks" (Doc. 127, p. 3:2) and are not otherwise
 15 relevant to any issue in this litigation. *See Quantum Labs, Inc. v. Maxim Integrated Products Inc.*,
 16 2019 U.S. Dist. LEXIS 199579, at *22-*23 (N.D. Cal. Nov. 18, 2019) (denying plaintiff's request for
 17 judicial notice of biography posted on defendant's website, as the document was not directed to a fact
 18 of consequence in determining the motion before the Court). Further, none of the purported "facts"
 19 on the Webpage are generally known within the trial court's territorial jurisdiction nor can they be
 20 accurately and readily determined from sources whose accuracy cannot reasonably be questioned. *See*
 21 *Koenig v. USA Hockey, Inc.*, 2010 U.S. Dist. LEXIS 122809, at *8-*9 (S.D. Ohio June 14, 2010)
 22 ("This Court concludes that federal courts should be very reluctant to take judicial notice of
 23 information or documents that appear exclusively on websites which have been created and are
 24 maintained by one of the parties to a case unless that party is a governmental body and the website is

25 ² The Opposition also cites to the Declaration of Restituto S. Lazaro as support for the statements
 26 made on its Webpage (Doc. 126, pp. 11:14 - 12:9, but Defendants' counsel has not been able to
 27 identify where, if anywhere, in the voluminous record the Declaration is found. "It behooves
 28 litigants, particularly in a case with a record of this magnitude, to resist the temptation to treat judges
 as if they were pigs sniffing for truffles." (*Dzung Chu v. Oracle Corp. (In re Oracle Corp. Sec. Litig.*)
 627 F.3d 376, 386 (9th Cir. 2010).

1 maintained not to further the business interests of the party but to provide a source of public
 2 information. The potential for fabrication or for inaccurate information is simply too great to be
 3 reconciled with the language in Rule 201 to the effect that judicial notice may be taken only if the
 4 information comes from ‘sources whose accuracy cannot reasonably be questioned.’) Thus, the
 5 Webpage is not a proper matter for judicial notice. *See Fed. R. Evid. 201(b); Gerritsen v. Warner*
 6 *Bros. Entertainment Inc.*, 112 F. Supp. 3d 1011, 1030 (C.D. Cal. 2015) (“Federal courts considering
 7 the issue have expressed skepticism as to whether it is appropriate to take judicial notice of
 8 information or documents appearing on websites that are created and maintained by a party to the
 9 litigation.”); *cf. Pollstar v. Gigmania Ltd.*, 170 F. Supp. 2d 974, 978 (E.D. Cal. 2000) (granting
 10 defendant’s request for judicial notice of plaintiff’s web site as some of the content were alleged in
 11 the complaint and neither party disputed the web site’s authenticity” and declining “to consider
 12 whether a printout of a web site as that site existed on July 9, 2000 is ‘generally known’ and ‘capable
 13 of accurate and ready determination by resort to sources whose accuracy cannot reasonably be
 14 questioned.””).

15 **III. DEFENDANTS’ RESPONSES TO FALSE AND UNSUPPORTED “FACTS”**

16 **ASSERTED IN INC’S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT**

17 **A. Defendants Kuizon, Mora and Villanueva Are Not Former INC Ministers**

18 In an effort to establish that [t]he services provided by Plaintiff and Defendants are identical,”
 19 and without citing any supporting evidence, the Opposition incorrectly claims that “[t]he individual
 20 moving defendants were former ministers in Plaintiff’s church until they were expelled therefrom.”
 21 Doc. 126, pp. 11:14-15, 12:11. In fact, Defendants Kuizon, Mora, and Villanueva were members of
 22 INC, but were never ministers of INC. Doc. 125-2, ¶ 3; 125-5, ¶ 2; 125-7, ¶ 2. Villanueva was also
 23 INC’s Legal Consultant from 1999 to 2004, Acting Corporate Secretary from 2004 to 2010, and
 24 counsel from 2010 to October 2011. Doc. 125-2, ¶ 2.

25 **B. H2O Now USA Never Provided Worship Services**

26 The Opposition also provides no evidence supporting its assertion that H2O Now USA
 27 provided worship services. Rather, as stated in H2O Now USA’s Articles of Incorporation, “The
 28 specific purpose of this corporation is to create an association of former INC members whose purpose

1 is to provide financial, legal and general assistance to those indigent individuals and groups who are
 2 currently victims of religious and/or political oppression and persecution worldwide.” Doc. 125-1, ¶
 3 and Exh.

4 **C. H2O Now USA, Dizon, and Cayabyab Did Not Infringe INC’s Copyrights**

5 As explained below, the Opposition’s assertion that “Defendants H2O, Dizon, and Cayabyab
 6 utilized Plaintiff’s copyrighted hymns in their worship services, and then infringed Plaintiff’s
 7 copyrighted hymns by broadcasting such worship services over the internet” (Doc. 126, pp. 5:26-6:1)
 8 is false. Notably, the Opposition does not identify which, if any, of its hymns are alleged to have been
 9 utilized by Defendants.

10 In fact, H2O Now USA and Cayabyab deny using any of INC’s copyrighted hymns. Doc.
 11 125-1, ¶ 6. Dizon admittedly “performed certain of INC’s hymns, but never otherwise used INC’s
 12 hymns.” Doc. 125-4, ¶ 4. In particular, Dizon “never copied, distributed or published the lyrics of
 13 INC’s hymns.” 125-4, ¶ 4.

14 Further, and more importantly, the Opposition does not provide any evidence that H2O Now
 15 USA, Dizon, and Cayabyab broadcast INC’s hymns over the internet. The unauthenticated
 16 screenshots attached as Exhibit H to the Declaration of Nicole M. Goss do not demonstrate that H2O
 17 Now USA, Cayabyab and Dizon was responsible for the publication of INC’s hymns online. To the
 18 contrary, the Declaration of Julie S. Sales³ states:

19 The person who formed the incdefenders.org website was Bernard Garcia who was,
 20 and currently is, an IT specialist. After the establishment and formation of the said
 21 website [sic], INC Defenders group also established online meetings and gatherings
 22 which are/were accessible worldwide by subscribers by logging into the Xoom
 23 account provided through INC Defendants Facebook account. ... INC Defenders also
 24 launched the INC Defenders Media where they post in the INC Defendants Media’s
 25 Facebook and Youtube [sic] accounts the online gatherings/meetings so that it will be
 26 accessible all over, not only California, but the world.”

27 Doc. 126-1, p. 72, ¶¶ 5, 6, p. 74, ¶ 12. Thus, the evidence submitted by INC establishes that it was
 28 Defendant Bernard Garcia that published the hymns online, and not H2O Now USA, Dizon, or
 Cayabyab.

³ The Declaration of Julie M. Sales is one of few Declarations that is properly verified under penalty of perjury as required by 28 U.S.C. § 1746, and Defendants do not object to its admissibility.

1 **D. Defendants Did Not Infringe INC's Trademarks**

2 The Opposition treats the Defendants as a single monolithic entity in claiming that
 3 “Defendants have utilized the Seal Mark, the Flag Mark, and the Executive Seal Mark (collectively,
 4 ‘Plaintiff’s marks’) on YouTube channels, websites, blogs, and Facebook pages that are owned and
 5 controlled by Defendants.” Doc. 126, p. 7:8-10. As discussed above, the subject websites were
 6 formed by Bernard Garcia (Doc. 126-1, p. 72, ¶¶ 5, 6, p. 74, ¶ 12), and INC has not provided any
 7 evidence refuting any of the Defendants’ Declarations that they did not create, maintain, or operate
 8 the subject websites, or author any of the blogs or media content thereon. Docs. 125-1, ¶ 5; 125-2, ¶
 9 6; 125-3 ¶ 3; 125-4, ¶ 3; 125-5, ¶ 3; 125-6, ¶ 3; 125-7, ¶ 4.

10 INC has also not provided any admissible evidence refuting the Defendants’ Declarations that
 11 they have not represented any affiliation with INC subsequent to their expulsions. Docs. 125-1, ¶ 8;
 12 125-2, ¶ 9; 125-3, ¶ 6; 125-4, ¶ 9; 125-5, ¶ 6; 125-6, ¶ 6; 125-7, ¶ 7. Indeed, Defendants Cayabyab and
 13 Kuizon publicly stated that they were “former INC members” in the Articles of Incorporation filed by
 14 H2O Now USA on January 24, 2016. Doc. 125-1, Exh.

15 Finally, INC has not submitting any countervailing evidence to Defendants’ unequivocal
 16 testimonies that they have not used INC’s Seal, Flag or Executive Seal. Docs. Nos. 125-1, ¶ 7; 125-2, ¶ 8;
 17 125-3, ¶ 5; 125-4, ¶ 5; 125-5, ¶ 5; 125-6 ¶ 5; 125-7, ¶ 6. Even if the Court were to consider the
 18 unauthenticated documents attached as Exhibit G to the Declaration of Nicole M. Goss, which it should
 19 not, they are of no assistance to INC. The documents do not contain any reference to Defendants De La
 20 Uso, Ramos, Kuizon or Villanueva. The documents also do not show that Cayabyab, Dizon, or Mora
 21 published any of INC’s Marks, and the document bates-stamped INC 756, actually states that the posts
 22 and articles were published by Antonio Ramirez Ebangelista. Doc. 126-3, p. 70.

23 **IV. ARGUMENT**

24 **A. Cayabyab, Dizon, and H2O Now USA Are Entitled to Summary Judgment on**
 25 **Plaintiff’s Copyright Infringement Claim**

26 “Plaintiff’s claim for copyright infringement is founded upon Defendants H2O, Cayabyab,
 27 and Dizon’s online publication of Plaintiff’s copyrighted hymns.” Doc. 126, p. 10:9-10.

28 The copyright infringement claim is subject to dismissal because Plaintiff’s Second Amended

1 Complaint and Opposition do not identify any of the copyrighted hymns that were allegedly
 2 infringed. *See, e.g., Four Navy Seals v. Associated Press*, 413 F. Supp. 2d 1136, 1139 (S.D. Cal.
 3 2005) (copyright infringement claim defective as “[t]he Complaint does not identify exactly which
 4 works Defendants infringed ...”); *Cutler v. Enzymes, Inc.*, 2009 U.S. Dist. LEXIS 17942, at *8 (N.D.
 5 Cal. Feb. 23, 2009) (granting motion to dismiss copyright infringement claim as plaintiff did not
 6 specify which of its three copyrighted works was infringed); *Salt Optics, Inc. v. Jand, Inc.*, 2010 U.S.
 7 Dist. LEXIS 131388, *18 (C.D. Cal. Nov. 19, 2010) (dismissing copyright infringement claim
 8 because “Plaintiff makes no attempt to identify which portions of the website or catalog it accuses
 9 Defendants of infringing.”).

10 INC’s copyright infringement claim also fails because it does not provide any admissible
 11 evidence supporting its assertion that “Defendants H2O, Cayabyab, and Dizon are liable for
 12 infringement of Plaintiff’s copyrighted hymns.” Doc. 126, p. 9:24-25. INC’s Opposition
 13 appropriately concedes that “the performance of a copyrighted hymn at a religious service cannot be
 14 deemed an infringement of copyright”, but maintains that there is liability for copyright infringement
 15 based on its unfounded assertion that “Defendants H2O, Cayabyab, and Dizon posted videos of their
 16 performances of Plaintiff’s copyrighted hymns and displays of the lyrics to Plaintiff’s copyrighted
 17 hymns to various websites and webpages owned and operated by Defendants.” Doc. 126, p. 10, 5-6,
 18 11-13. The movant Defendants have unequivocally testified that they did not publish any of the
 19 copyrighted hymns, however, and the evidence submitted by INC demonstrates that the hymns were
 20 posted online by Bernard Garcia. Thus, as a matter of law, H2O Now USA, Cayabyab, and Dizon
 21 are not liable for copyright infringement.

22 **B. Defendants Are Entitled to Summary Judgment on the Federal Trademark**
 23 **Infringement Claim**

24 To prevail on its trademark infringement claim, INC must prove that the Defendants used the
 25 Marks at issue in commerce and in connection with the sale, distribution, or advertising of goods or
 26 services in connection with which such use “is likely to cause confusion, or to cause mistake, or to
 27 deceive.” 15 U.S.C. § 1114. Again, there is no admissible evidence that any of the Defendants’ used
 28 Plaintiff’s Marks.

1 Even if the Court considers the unauthenticated documents purporting to show Cayabyab’s,
 2 Dizon’s, and Mora’s use of the Marks, application of the *Sleekcraft* factors⁴ would nonetheless
 3 warrant a grant of summary judgment for these Defendants as INC has failed to raise a genuine issue
 4 of material fact showing a likelihood of confusion. *See, e.g., Cohn v. Petsmart, Inc.*, 281 F.3d 837,
 5 842 (9th Cir. 2002) (affirming grant of summary judgment where plaintiff’s “evidence fail[ed] to
 6 create a genuine issue that confusion is probable, not simply a possibility”) (internal quotation
 7 omitted); *Surfivor Media, Inc. v. Survivor Productions*, 406 F.3d 625, 634 (9th Cir. 2005) (“The
 8 distribution of the *Sleekcraft* factors does not raise a material issue of fact regarding likelihood of
 9 confusion.”); *Applied Information Sciences Corp. v. eBAY, Inc.*, 511 F.3d 966, 969 (9th Cir. 2007)
 10 (affirming grant of summary judgment where plaintiff “failed to produce any admissible evidence
 11 tending to show a likelihood of confusion”). First, INC has not provided any evidence showing that
 12 any of its Marks have high public recognition. Second, INC has not provided any evidence that Mora
 13 provided any religious services, nor that the worship services conducted by Cayabyab and Dizon after
 14 their expulsion from INC were similar to an INC religious service as to the size, venue, or location.
 15 Third, the Opposition does not offer any evidence that any of the Defendants used the Marks, let
 16 alone versions of the Marks that were similar to Plaintiff’s Marks. Fourth, the religious ceremonies
 17 identified in the Opposition as evidencing actual customer confusion were conducted by persons
 18 other than Cayabyab, Dizon, and Mora. *See, e.g.*, Doc. 126-1, p. 48, ¶ 5 (“Jeriel Nemis conducted the
 19 prayer meeting . . .”); p. 52, ¶ 5 (“I did not recognize the one who led this particular ‘worship
 20 service.’”); p. 57, ¶ 14 (referring to “worship services” conducted by Liezel Deocampo). Fifth, the
 21 Opposition does not provide any admissible evidence that either Plaintiff or Defendants “utilize the
 22 Internet to market their goods and services to the public.” Doc. 126, p. 14:19-24. Sixth, the anecdotal
 23 statements that are offered as “direct evidence that donors do not exercise a great deal of care in

24 ⁴ As this Court knows, “the Ninth Circuit considers the following eight factors, known as the
 25 *Sleekcraft* factors, to assess whether likelihood of confusions exists: (1) the strength of the plaintiff’s
 26 mark; (2) the proximity of the parties’ goods; (3) the similarity of the parties’ marks; (4) evidence of
 27 actual confusion; (5) the marketing channels used; (6) the type of goods or services and the degree of
 28 care likely to be exercised by purchases; (7) defendant’s intent in selecting the mark; (8) likelihood of
 expansion of the parties’ product line.” *Bridgestone Brands, LLC v. Dastgah*, 2016 U.S. Dist. LEXIS
 35557, at *7 (N.D. Cal. Mar. 18, 2016) (citing *AMF Inc. v. Sleekcraft Boats*, 599 F.2d 341, 348-49
 (9th Cir. 1979)).

1 making their donations to Plaintiff or to Defendant H2O" do not evidence that Defendants solicited
 2 any donations. Doc. 126-1, p. 52, ¶ 7 (\$20.00 donation made to help the children of the late
 3 Executive Minister of the Church during "worship services" led by unidentified person); p. 69, ¶¶ 5-
 4 10 (discussing donations solicited by Estela Gagcuas). Seventh, the Opposition offers only
 5 conjecture that "Defendants' intent in using Plaintiff's Marks was to trade off of Plaintiff's name and
 6 goodwill" (Opp. p. 15:21-22) and fails to reconcile said conjecture with its allegations that
 7 "Defendants are intentionally disparaging the reputation and goodwill of INC ..." Doc. 1, p. 21, ¶ 85.
 8 Eighth, and finally, INC offers to argument or evidence that there is any likelihood of expansion of
 9 the parties' product lines, nor is there is any.

10 **C. Defendants Are Entitled to Summary Adjudication on the False Designation of**
 11 **Origin Claim**

12 The parties and the Court are in agreement that "[t]he elements of a claim for false
 13 designation of origination under § 1125 are virtually the same as the elements of a claim for
 14 trademark infringement under § 1114 ..." Doc. 110, p. 17:19-20; Doc. 126-1, p. 16:19 ("the test for
 15 false designation of origination is the same as that for federal trademark infringement ..."). Thus,
 16 because Plaintiff has failed to submit any admissible evidence that any Defendants used its Marks or
 17 any likelihood of confusion, its claim for false designation of origin necessarily fails.

18 **D. Defendants Are Entitled to Summary Adjudication on Count IV for Unfair**
 19 **Competition Under Cal. Bus. & Prof. Code §§ 17200 et seq. and Count V for**
 20 **Unfair Competition Under California Common Law**

21 "This Circuit has consistently held that state common law claims of unfair competition and
 22 actions pursuant to California Business and Professions Code § 17200 are 'substantially congruent' to
 23 claims made under the Lanham Act." *Cleary v. News Corp.*, 30 F.3d 1255, 1262-1263 (9th Cir. 1994)
 24 (collecting cases). Thus, Plaintiff's state law unfair competition claims must be dismissed if the
 25 related Lanham Act claims are dismissed. *See Japan Telecom, Inc. v. Japan Telecom America Inc.*,
 26 287 F.3d 866, 875 (9th Cir. 2002) (plaintiff's "California unfair competition claim fails because its
 27 related Lanham Act claims fail"); *Denbicare U.S.A., Inc. v. Toys "R" Us, Inc.*, 84 F.3d 1143, 1152-
 28 1153 (9th Cir. 1996) (dismissal of plaintiff's § 17200 claim was proper since plaintiff's Lanham Act

1 claim was properly dismissed).

2 **V. CONCLUSION**

3 Defendants are entitled to summary judgment in this action as they did not infringe any of
4 Plaintiff's copyrights or trademarks.

5
6 Dated: February 10, 2020

LAW OFFICES OF SETH W. WIENER



7
8 By: _____
9 Seth W. Wiener
10 Attorneys for Defendants
11 LUISITO E. CAYABYAB, ROLANDO DIZON, JR.,
12 LIONEL ROQUE DELA USO, ALLAN MONTE DE
13 RAMOS, JESLE LLABAN KUIZON, LIEZL DIAZ-
14 DEOCAMPO, EDWIN LIONEL R. MORA, ALLAN
15 VILLANUEVA, H2O NOW USA

CERTIFICATE OF SERVICE

I hereby certify that on February 10, 2020, I caused a true and correct copy of the foregoing to be served via the United States District Court's CM/ECF system, which will provide a copy to all counsel of record registered to receive CM/ECF notifications.

By: _____
Seth W. Wiener